Ministry of
Municipal Affairs
and Housing

Ontario

THE PLANNING ACT

GUIDELINE 11

Committees of Adjustment, Minor Variances and Non-Conforming Uses

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This series of guidelines explains:

- those provisions of the legislation which are either new or significantly changed from the former Planning Act, and

- planning issues of interest to municipalities and the public.

The guidelines should assist in understanding and applying the new legislative provisions, but are advisory only. While some guidelines include proposed methods of applying these provisions, they do not describe the *only* ways of using them.

The guidelines should *not* therefore be interpreted as statements of government policy.

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1 INTRODUCTION

This guideline involves the revision and combination of two previously published guidelines "Establishing a Committee of Adjustment" (April 1980) and "Minor Variances and Non-Conforming Uses" (September 1980). This revision reflects the slightly modified requirements of the Planning Act, 1983.

Sections 2 and 3 of this guideline outlines how council can establish a committee of adjustment to deal with minor variances and non-conforming uses. The remaining sections discuss the legal, operational and planning framework for granting minor variances and relief to non-conforming uses.

The opinions offered are for general information only. Councils, committees of adjustment and other interested persons should consult their legal and other advisors on specific matters.

2 COMMITTEE OF ADJUSTMENT

The Planning Act, 1983 allows a municipal council to appoint a committee of adjustment to consider minor variances from zoning by-laws and certain other by-laws, and permit changes to legal non-conforming uses. The term "committee of adjustment" comes from the committee's role of adjusting by-law requirements in special circumstances.

The Advantage of Having a Committee of Adjustment

Establishing a committee of adjustment is not mandatory. However, a committee can help council administer zoning by-laws if the anticipated volume of applications for minor variances and relief from non-conforming uses is high.

It may be quicker and less expensive for a committee of adjustment to process minor variance applications than for council to amend the by-law for minor changes, including the expansion of legal non-conforming uses under section 34(10). Council also may not have the time to fully evaluate applications for minor changes to the zoning by-law. It may be preferable to have a committee of adjustment review the applications in detail and make decisions on them.

Establishing a Committee of Adjustment

Section 43 of the Planning Act, 1983 contains the statutory provisions for constituting and appointing a committee of adjustment. The pertinent provisions contained in section 43 are summarized below:

Zoning by-law requirement — Council must have passed a zoning by-law before it can establish a committee of adjustment. The committee can be established before the by-law comes into force. However, the committee should not grant any approvals until after the by-law is in force because if there is an appeal to the Ontario Municipal Board the subsequently approved by-law may vary from that adopted by council.

Constituting by-law — Council must pass a by-law to establish a committee of adjustment (see Appendix 1 — sample by-law to constitute and appoint a committee of adjustment).

The former Planning Act permitted committees to authorize minor variances to any by-law implementing an official plan. However, the Planning Act, 1983 allows committees to authorize minor variances only to zoning by-laws (this includes holding, bonus and temporary use by-laws) and interim control by-laws, unless council extends the power of the committee to other by-laws. If council wishes to extend the committee's powers to grant minor variances to other named by-laws, it should pass a separate by-law under section 44(3).

Membership — At least three persons must be appointed to the committee (section 43(1)). Anyone, including members of council, employees of the municipality or a local board is eligible to be a member of the committee.

Copy of by-law to minister — Once the constituting and appointing by-law is passed, the municipal clerk must, within 30 days, send a certified copy by registered mail to the Minister of Municipal Affairs and Housing (section 43(2)). Only the by-law actually establishing a committee must be sent to the minister. Subsequent by-laws appointing new members should not be sent to the ministry.

Term of office — Members of the committee who are not members of council are appointed for the three year term of the council that appointed them; committee members who are members of council are appointed annually (section 43(3)).

Members hold office until their successors are appointed and are eligible for reappointment. Where a member does not complete his term, the council appoints another member for the unexpired portion of the term (section 43(4)).

Powers of a Committee of Adjustment

Under sections 44(1) and (2) of the Planning Act, 1983, a committee of adjustment is automatically assigned responsibility for proccessing applications relating to the following:

- minor variances to certain types of by-laws;
- non-conforming uses; and
- permitting specific uses where a by-law defines them in general terms.

Minor variances — A committee may grant a minor variance to any zoning by-laws passed under section 34 of the Planning Act or a predecessor of this section. These include holding by-laws, bonus by-laws and temporary use by-laws. Minor variances can also be granted to interim control by-laws passed under section 37. A committee can vary by-law provisions relating to land, buildings or structures or the use of any of these, providing it is of the opinion that this is desirable for the appropriate development or use and the general intent and purpose of the by-law and the official plan, if any, are maintained.

Additional minor variance powers — In addition to the preceding assigned powers, a committee of adjustment can be authorized, by council by-law, to grant minor variances to any specified by-laws that implement an official plan.

Non-conforming uses — A committee may approve one or more applications for enlargement or extension to an existing legal non-conforming building or structure providing the use continued from the date the by-law was passed until the date of the application to the committee. The committee may also consider one or more successive expansions to a legal non-conforming use which did not continue from the passing of the by-law. However, the use must have been previously permitted by the committee and continued to the date of application. The Act does not give the committee the authority to enlarge or extend a building or structure beyond the limits of the land owned and used on the day the by-law was passed or to permit a new building.

A committee may also approve one or more applications for a use that is either similar to the purpose of the existing legal non-conforming use or that is more compatible with the uses permitted in the by-law. If the by-law permits the proposed use the approval of the committee is not necessary.

By-law interpretation — Where the permitted uses in the by-law are defined in general terms, a committee may permit a use not specifically named in the by-law if, in the opinion of the committee, this use conforms to the by-law.

3 MINOR VARIANCES AND NON-CONFORMING USES

Several items apply equally to both minor variances and non-conforming uses. These include the fees for processing applications, rules of procedure and the importance of municipal and provincial planning documents.

Fees

Section 68 of the Planning Act, 1983, gives council the option of prescribing, by by-law, a tariff of fees for processing planning applications including applications for minor variances and non-conforming uses. This fee schedule should be designed to meet the anticipated processing cost to the committee of adjustment. Where the fees charged do not cover the expenses for processing applications made to the committee, the remainder of the costs must be assumed by the municipality. Under the Planning Act, the committee of adjustment may, in processing a planning application, reduce the amount of, or waive the requirement for, the payment of a fee. For more information on the subject of fees, see "Guideline 7: Planning Application Fees".

Rules of Procedure

Procedures for committees of adjustment are set out in the Act and rules of procedure, Regulation 447/83. For more information on these procedures, see "Guideline 5: Working with the New Regulations". As well, section 44 of the Act should be reviewed.

Getting the Committee of Adjustment Started

The committee of adjustment makes decisions within the context of the Planning Act, regulations and provincial and local land use planning policies. It is important that the members are provided with all relevant planning documents and are aware of their responsibilities and procedures. The following assistance is appropriate:

Provision of planning documents — The committee should be given copies of all planning documents in effect in the municipality. These include all zoning by-laws, the official plan, community improvement plans and amendments, provincial policy statements issued under section 3 of the Planning Act, and any other relevant documents including provincial guidelines.

Orientation program — Council also should ensure that the committee receives an orientation program. Arrangements can be made through the Community Planning Advisory Branch of the Ministry of Municipal Affairs and Housing to have a staff member meet with the members of the committee and explain their new responsibilities. On request, that branch can provide the following materials:

- The Planning Act 1983;

- Ontario Regulation 447/83 — Rules of Procedure; and
- Guideline 5 — Working with the New Regulations;

The Ongoing Involvement of Council

Since committees of adjustment must be aware of policy changes when making decisions, they must be kept informed of changes to the official plan, community improvement plan and zoning by-laws and any provincial policy statements.

If council feels that a decision is not compatible with municipal policies, it may appeal the decision to the Ontario Municipal Board under section 44(12) of the Act.

Finally, council has an ongoing role in appointing or re-appointing members of the committee as their terms expire.

4 THE LEGAL FRAMEWORK

Zoning

Zoning — What is it?

Community planning is basically a two function process:

- policy making, and
- implementation

The policies are usually contained in official plans and implemented in zoning by-laws.

Statutory basis — the Planning Act allows municipal councils to pass zoning by-laws, which control land use and may set standards. If zoning is in effect, a development proposal must conform to the requirements of the by-law or a building permit cannot be issued.

Zoning is not mandatory in Ontario. Some rural areas have no zoning controls to regulate where development may take place. There may be no controls aside from the Ontario Building Code, which establishes construction standards. A property owner can get a building permit for any use in any location, provided he meets the standards set out in the Building Code and any other laws in effect.

The importance of zoning — a property owner must meet the requirements of the zoning by-law precisely. One function of zoning is to protect property values by defining in exact terms, through a public document, what standards a property owner must meet to develop land. If these standards are not met, the property owner can be prosecuted.

Preciseness of zoning — zoning is precise and exact. A building permit cannot be issued unless the proposal complies with the terms of the by-law *exactly*.

Minor Variances

A Minor Variance — What is it?

The following two situations illustrate what a minor variance is.

The owner of the lands shown in Figure 1 wishes to construct a duplex on his 697 square metre lot. The siting of the building shows that it cannot be located to meet the front yard requirement of the zoning by-law. As Figure 1 illustrates, there is a stream running along the rear lot line of his property. The proposed dwelling must be located a minimum of 7.5 metres from the stream because of the requirements of the zoning by-law. The topography of the lot is such that the building can only be built in the location shown.

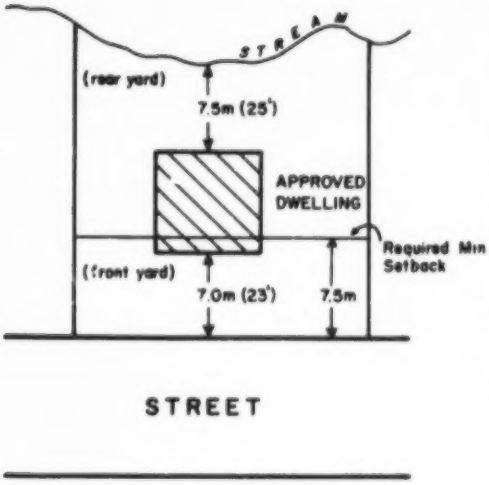


FIGURE 1

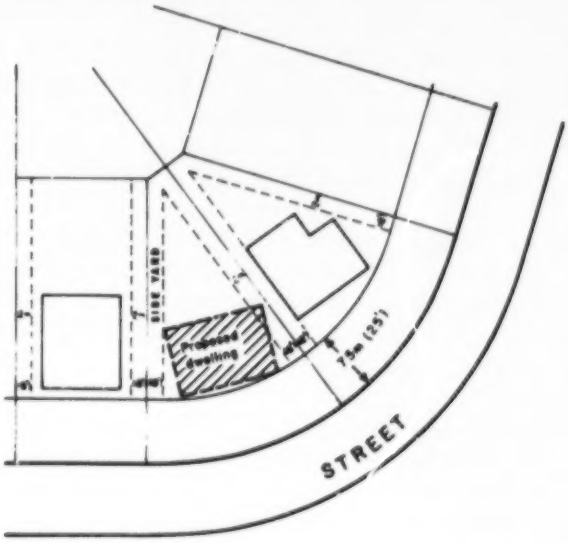


FIGURE 2

If the building complies with the rear yard setback it will not meet the front yard requirement of 7.5 metres from the street line and consequently a building permit could not be issued.

In Figure 2, because of the shape of the lot, the proposed dwelling encroaches slightly on the minimum side yard of 2 metres required in the zoning by-law. Because the dwelling does not meet the 2 metre requirement, a building permit cannot be issued.

In both these situations the property owner could apply to municipal council for a by-law amendment. The by-law amendment process, however, may, in some cases, be unnecessarily long and costly. It is for situations such as these that the minor variance process was developed.

A minor variance is really a small variation from the requirements of the by-law. The need for the variation is created by circumstances peculiar to the land, building, structures or use that prevent the owner from meeting all the requirements of the by-law. A minor variance approval is a certificate of permission, because it allows the property owner to get a building permit even though his proposal does not comply precisely with the by-law requirements.

Types of Provisions Varied

Committees can vary by-law provisions relating to the land, building, or structure or the uses of any of these. A parking space provision in the by-law may, therefore, be the subject of a minor variance application. For example, the owner of land shown in Figure 3 may wish to erect an office. According to the by-law requirements the maximum permitted floor area requires 8 off-street parking spaces. However, the owner finds that, because of the railroad track cutting off the corner of the property, only 6 spaces can be provided. The owner can apply to the committee of adjustment for a minor variance from the parking requirement of 8 spaces. The committee may grant such a variance if in its opinion the variance is appropriate, providing the basic intent of the by-law and any official plan is maintained.

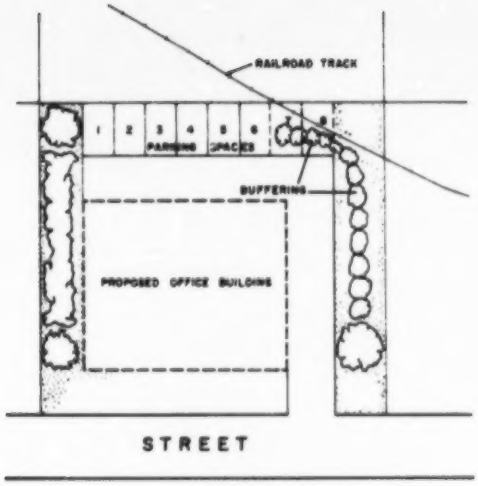


FIGURE 3

Variance to Other By-laws

Under the Planning Act, 1983, a committee of adjustment is assigned the power to grant minor variances to zoning by-laws and interim control by-laws. However, the committee can be authorized, by council by-law, to grant minor variances to any specified by-laws that implement an official plan. For example, a committee could be authorized to grant variances to a sign by-law if it clearly implements an official plan. The committee should not be authorized to deal with by-laws regarding financial matters, e.g. temporary municipal borrowing by-laws even if they are construed as implementing an official plan because the Municipal Act and other Acts permit amendment of such by-laws.

Non-conforming Use

A Non-conforming Use — What is it?

In addition to its powers to grant minor variances, a committee of adjustment also has some authority to deal with changes to non-conforming uses. A legal non-conforming use is a use that legally existed on the day the by-law came into force and continues to be used for that purpose although it is not recognized in the by-law.

For example, suppose the official plan (council's statement of long range planning policy) states that a certain neighbourhood should, in the long run, be exclusively multiple family residential. At present, the area contains a number of different uses. One of these is a 20 year old tire factory which complied with the regulations in effect when it was built. The municipality implements the official plan by zoning the entire neighbourhood RM2 (multiple family residential). The tire factory is a legal non-conforming use. It is a legal use but it is not among the uses permitted by the by-law. No new tire factory could be built in the area zoned RM2.

Statutory provisions — Because of provisions in the Planning Act, 1983, this tire factory can continue to exist despite the fact that it is not a residential use and does not comply with the by-law requirements. Section 34(9) of the Planning Act protects any land, building or structure that was used for a purpose prohibited by the by-law on the day the by-law was passed. There are, however, two important provisos.

- First, the non-conforming use must be there legally. This means that it must have complied with the building regulations in effect when the use began. The building permit must have been obtained legally.

- Second, the non-conforming use must be continuous. A non-conforming use cannot close down and reopen at will. A regular seasonal closing is allowed. If a non-conforming use closes down for an extended period of time, it loses its non-conforming status. Since it does not comply with the by-law, the municipality can take legal action against the owner if the same use resumes after an extended period.

Non-conforming Uses and the Committee of Adjustment

A non-conforming use should cease to exist in the long run and be replaced by a use that conforms to the zoning by-law and the official plan where there is one. Despite this aim, the Planning Act, 1983 gives legal non-conforming uses some concessions even though they do not comply with the municipality's long term plans. Section 44(2) of the Act gives committees of adjustment some additional powers regarding expanded or different non-conforming uses.

Discretionary approval — First, these powers are discretionary. Approvals are not ganted as of right or as a matter of course. Each application must be assessed on its own merits before the committee decides whether or not to grant permission.

Expansions of legal non-conforming uses — The owner of a tire factory wants to expand it. However, he cannot get a building permit to do so since the factory is not recognized as a permitted use in the by-law. Section 44(2)(a)(i) of the Planning Act requires the following conditions to be satisfied before a committee of adjustment considers an application or successive applications for expansion of a legal non-conforming use:

- the use must be continuous. This means a use existing from the date the by-law was passed or a similar or more compatible use (approved by the committee) which has continued until the date of the application to the committee.

- the expansion must only be on property originally owned. It has to be within the limits of the land owned (and used in connection with the use) on the day the by-law was passed. This means that the owner cannot buy and include adjacent land for the expansion.

- No new separate buildings are allowed. The owner can apply to the committee of adjustment to build an addition (enlargement or extension) only. The ultimate aim is for the non-conforming use to cease to exist and be replaced by a conforming one. A new and separate building would tend to perpetuate the use indefinitely and so it is not allowed.

Similar use — The committee can also approve one or more applications for a use similar in purpose to the non-conforming use existing on the day the by-law was passed (section 44(2)(a)(ii)). For example, perhaps the owner of the tire factory decides to sell the factory. While the owner cannot find a purchaser to continue manufacturing tires, a manufacturer of rubber would like to buy and use the factory. This is a similar but still non-conforming use and the owner must apply to the committee of adjustment for approval. Of course, if the by-law permits just factories in this area, the approval of the committee would not be required because the new use meets the by-law.

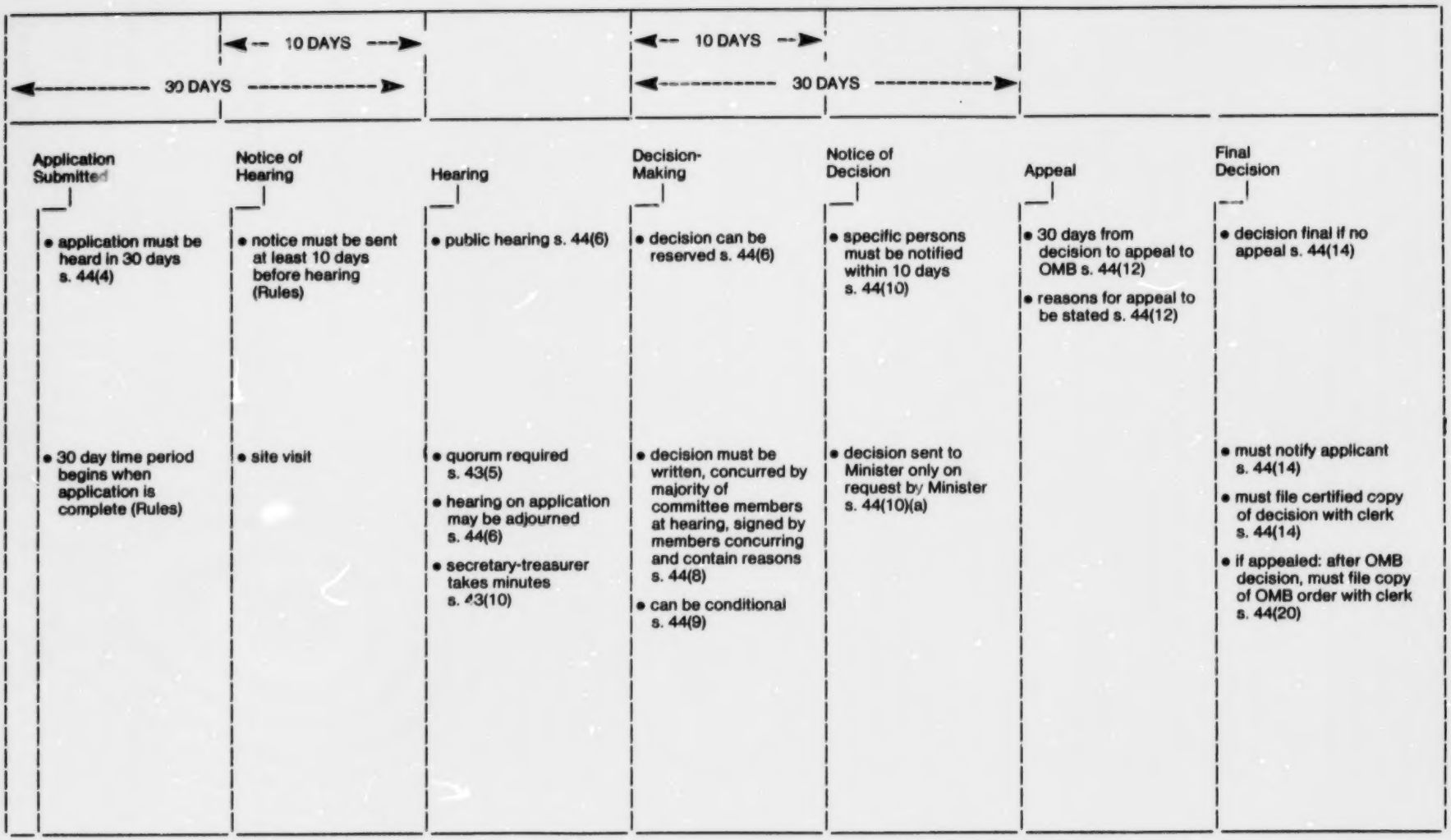
More compatible use — Sometimes the proposed use is not similar but rather more compatible with the uses permitted by the by-law and the eventual desired character of the neighbourhood. Perhaps the tire manufacturer finds a buyer who wants to use the building as a warehouse. The owner must apply to the committee for permission stating that this would be more compatible because there would be no on-site manufacturing and traffic volumes for pick-ups and deliveries would be no greater than at present. It would be the committee's responsibility to decide if the intended use would be more compatible with the ultimate desired character of the neighbourhood.

Expansion privileges after change in use — If this change in use is approved, the warehouse would be a legal non-conforming use but it could still be expanded subject to the approval of the committee. The warehouse owner could apply to the committee for an addition because as previously indicated, the Act provides for expansion of approved uses which are similar or more compatible with the uses permitted in the by-law.

By-law interpretation — Some by-laws, especially older ones, are written in general terms. They contain no list of specific permitted uses. Such a by-law may state, for example, that certain lands can be used for industrial purposes. It does not provide details regarding the types of industrial uses. The building inspector must decide whether a given proposal complies with the zoning by-law, i.e. is it an industrial use? In some cases, he may refuse to issue a building permit for a proposal because he is uncertain about its compliance with the by-law, or he may ask the property owner to apply to the committee of adjustment for an interpretation. The committee of adjustment will determine if the proposed use complies with the intent of the by-law. If the application is approved by the committee of adjustment then a building permit can be issued (section 44(2)(b)).

FIGURE 4

APPLICATIONS MADE UNDER SECTIONS 44(1), (2) AND (3) OF THE PLANNING ACT — CHRONOLOGY


10 DAYS
10 DAYS
30 DAYS
30 DAYS
Application Submitted
Notice of Hearing
Hearing
Decision-Making
Notice of Decision
Appeal
Final Decision
• application must be heard in 30 days s. 44(4)
• notice must be sent at least 10 days before hearing (Rules)
• public hearing s. 44(6)
• decision can be reserved s. 44(6)
• specific persons must be notified within 10 days s. 44(10)
• 30 days from decision to appeal to OMB s. 44(12)
• reasons for appeal to be stated s. 44(12)
• decision final if no appeal s. 44(14)
• 30 day time period begins when application is complete (Rules)
• site visit
• quorum required s. 43(5)
• hearing on application may be adjourned s. 44(6)
• secretary-treasurer takes minutes s. 43(10)
• decision must be written, concurred by majority of committee members at hearing, signed by members concurring and contain reasons s. 44(8)
• can be conditional s. 44(9)
• decision sent to Minister only on request by Minister s. 44(10)(a)
• must notify applicant s. 44(14)
• must file certified copy of decision with clerk s. 44(14)
• if appealed: after OMB decision, must file copy of OMB order with clerk s. 44(20)

5 THE OPERATIONAL FRAMEWORK

There are uniform standards for the operation of committees of adjustment. Some of the reqirements are set out in the Planning Act, 1983. The rest are in Regulation 447/83, the rules of procedure for minor variance applications. These rules are made under section 43(11) of the Planning Act.

Between the time an application is received and a decision on it is finalized, a number of events and considerations must take place. Figure 4 presents this information in chart form.

The Application

The Application Form

The required application form is set out in Form 1 of the rules of procedure. Each committee should have applications printed and available to individuals who request them.

The questions contained in Form 1 should be asked. However, the committee can add other relevant questions to the form if it finds that local circumstances warrant additional information. The committee may also attach information sheets regarding its requirements or schedule eg. dates for committee hearings and deadline dates for submitting applications for different hearings. Where the application involves a non-conforming use, questions 12 to 16 are very important. The secretary-treasurer should ensure that these questions are answered. This information is vital in determining if the existing use is a legal non-conforming use.

The secretary-treasurer should also make sure:

- the application form has been fully completed;
- the sketch map is acceptable;
- as many copies of the application as the committee considers necessary have been submitted. (This requirement is in the rules to save the committee copying costs);
- all necessary information including, for example, the owner's authorization, has been submitted.

The Sketch Map

The rules of procedure state that the applicant must attach a copy of the plan or sketch map to each copy of the application submitted.

Importance of good sketch maps — A committee needs a clear and complete sketch in order to properly evaluate an application. If there are serious problems with boundaries, orientation and scale, the committee can require that the sketch be prepared by an Ontario Land Surveyor. The committee can also require a plan signed by an Ontario Land Surveyor. While the rules of procedure permit this requirement, the committee should use it only where absolutely necessary, since it may cost the applicant a significant amount of money.

A sketch map such as the one shown in Figure 5 will be adequate in many cases. In this instance, the application is for a reduction in the rear yard requirement from 7.5m to 7.0 metres to permit the construction of an addition to the existing residence.

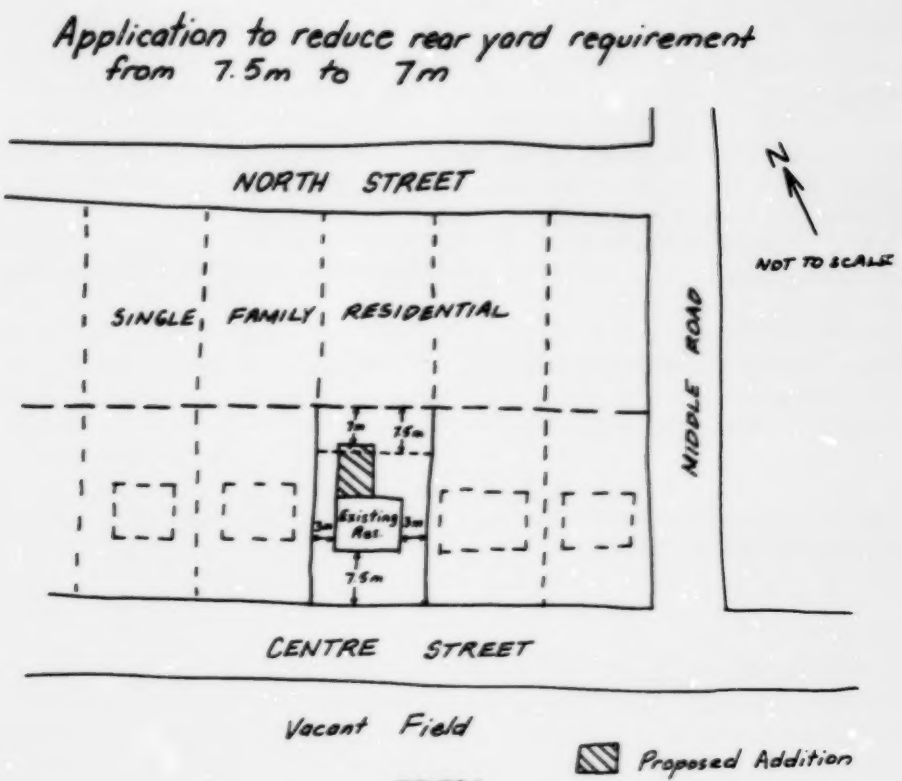


FIGURE 5

However, there are other instances where an accurate survey is preferable. Suppose an application is for a variance from the 2.5 metre side yard requirement. The applicant's building will encroach 0.6 metres into that side yard. He applies for a 0.6 metre variance using a sketch map. It is approved but when he gets the actual survey done he finds he will encroach 0.7 metres. In this case, he still will not be able to get a building permit. His minor variance was for 0.6 metres, not for 0.7 metres. He will have to reapply to the committee for another variance. A lot of time and expense could have been saved if the property was surveyed in the first place and an accurate application made to the committee.

The Filing and Record System

Technical requirements — There are several requirements for filing and record keeping. First, section 43(10) of the Planning Act stipulates that the secretary-treasurer must keep on file minutes and records of all applications and official business of the committee. Section 7 of the rules of procedure (Regulation 447/83) provides that where the office of the secretary-treasurer is vacant or the secretary-treasurer is unable to carry out his duties another person authorized by the committee of adjustment should attend all meetings and hearings and keep minutes and records.

Section 3 of the rules of procedure indicates two specific requirements for record keeping:

Receipt date — The secretary-treasurer must note the date of receipt of each copy of the completed application. The date helps in arranging hearings, since all applications must be heard within 30 days of their receipt.

Numbering of applications — Committees must use a specific numbering system for minor variance and non-conforming use applications. Applications must be prefixed with the letter "A" and numbered consecutively, beginning with "1" at the beginning of each calendar year, followed by an oblique stroke and the last two digits of the year. For example, A/15/84 refers to the 15th submission in the year 1984.

Committees can also use other numbering systems for in-office filing purposes. However, all committees must use the numbering system prescribed for applications in the rules of procedure.

Organizational aids — Other record keeping depends on the size of the committee's operation. There are no prescribed rules — it is up to the committee to decide what is appropriate. Here are some ideas that may be adaptable to your circumstances:

- It is helpful to have a separate file folder for each application. Papers should be clipped inside so they will not be lost.

- If your volume of applications is heavy, you may need an index to your applications, similar to the one shown in Appendix II. Such an index is handy for telephone calls or to check for duplicate applications.

- You may decide on a summary sheet to be kept at the front of each application. It is again helpful for telephone calls. But it does require work to keep it up to date. (See Appendix III for a sample summary sheet).

Fees

An application fee — This fee may be charged if this is indicated in a municipal by-law passed under section 68 of the Planning Act. Under the Act a committee of adjustment may also reduce the amount of, or waive the requirement for, the payment of a fee if it is satisfied that it would be unreasonable to require the fee established by the by-law.

Lot inspection fee — Under the Environmental Protection Act, health units (and other delegated authorities under Part VII of that Act) can charge fees for minor variance applications involving *private* sewage systems. These fees allow the delegated authority to recover the cost of inspecting the site of such applications. Fees are *only* payable to the delegated authority if the committee of adjustment requests their comments on applications. No fees are charged if applications are inadvertently circulated and it is clear to the delegated authority that there is no need to inspect the site for existing or proposed private sewage systems.

Section 71(4) of the Environmental Protection Act prevents a committee from approving applications until it is satisfied that any required fees have been paid to the delegated authority. The committee can assume that any required fee has been paid if it receives a comment on an application from the delegated authority because the Ministry of the Environment has asked authorities to provide comments only after they receive the fee. A committee should confirm whether the delegated authority has set a fee for minor variance applications in the municipality. If there is a fee, the committee should consider, in collaboration with the delegated authority, ways of informing applicants of the following:

- the existence and amount of the fee;
- how to pay the fee to the health unit; and
- the need to pay the fee before the committee can decide the application.

The application form or a separate sheet (for applicants) could be the method of providing this information.

In any event, working with the health unit or other authority on this issue will ensure convenient administration for all the parties in the process.

Notice and Site Visit

Notice of hearing and circulation — Under section 44(4) of the Planning Act, a completed application must be heard within thirty days of receipt by the secretary-treasurer. The Act also requires the committee to give notice of the hearing of an application in the manner and to the persons prescribed in the rules of procedure.

Period of notice — The rules of procedure make the committee responsible for giving the required notice at least 10 days before the hearing.

Manner — No specific manner of notice is required. Instead the committee, through the secretary-treasurer, gives the notice in such manner as it considers proper.

Information — The notice must contain the *time* and *place* of hearing and a brief explanation of the *nature of the proposal.*

Persons and agencies — The list of those to be notified is detailed in the rules of procedure and discussed in "Guideline 5: Working with the New Regulations". They are as follows:

- the applicant;
- each person shown in the application to be an encumbrancer of the land that is the subject of the application (encumbrancers are those who have an interest in the title to land (e.g. mortgagees) rather than those whose interest is restricted to the use of the land (e.g. lessees));
- to the senior planning officer of the upper tier municipality (eg. county, district, metropolitan or regional municipality). Where there is no such officer, then notice should be given to the chief administrative officer or, if this post does not exist, to the clerk of the upper tier municipality. The committee need not notify any officer who indicates in writing that he/she does not wish to receive notice of applications.
- all assessed owners of land within 60 metres of land that is the subject of the application. In the case of a condominium located within 60 metres of land, notice may be given to the condominium corporation instead of all assessed owners.
- any other person, local, provincial or federal agency that the committee determines should receive notice.

The rules of procedure allow a committee to direct that the area of notification be reduced to thirty metres if the application is for a minor variance under section 44(1) of the Act and the zoning by-law zones the subject area for single family, semi-detached or duplex housing.

The site visit — In those instances where the committee determines that a site visit is desirable, all members of the committee participating in the decision on the application should receive the same information on the visit. They should make the visit at the same time, in the presence of all interested parties. Alternatively, the secretary-treasurer may make the visit and provide a report on the site visit to all members.

The Hearing

The hearing of an application is affected by these procedural requirements under the Planning Act and the rules of procedure:

30 day time limit — the hearing must be held within 30 days of receipt of the completed application (section 44(4) of the Act).

Public hearing — The hearing must be public and anyone who wishes to attend and/or make representation may do so (section 44(6)).

Quorum — In a committee of 3, 2 members form a quorum; in a committee of more than 3, then 3 is a quorum (section 43(5)). As long as there is a quorum, the committee can carry on.

Oaths — Oaths may be required and made at the discretion of the chairman (section 44(7)).

Adjourned hearing — If the committee does not have full information and needs more time to obtain it, the hearing may be adjourned and a decision on the application reserved (section 44(6)).

Where the hearing is adjourned, the committee should note the requirements in the rules of procedure for notice of the next hearing. If the chairman of the committee knows the time and place, he should announce it publicly at the meeting. If it is yet to be determined, he should state that the secretary-treasurer will notify those who leave their names and addresses with him.

The Statutory Powers Procedure Act — In addition to the Planning Act, committees of adjustment are also subject to the requirements of the Statutory Powers Procedure Act, R.S.O. 1980. This Act sets certain rules for hearings, the outcome of which may affect the legal rights of individuals. It formalizes certain principles of natural justice to ensure hearings are fairly conducted.

Secretary-treasurers should become familiar with the effect of this Act on the operation of their committee. Copies are available by mail through:

Ontario Government Bookstore
880 Bay Street
Toronto, Ontario
M7A 1N8

The price is $1.50, payable in advance to the Treasurer of Ontario.

The requirements of the Statutory Powers Procedures Act are, in certain ways, similar to the requirements for committees of adjustment under the Planning Act. The requirements of both Acts should be met. The following are some of the provisions of the Statutory Powers Procedure Act relevant to a committee of adjustment. Where the same or similar provision is found in the Planning Act or the rules of procedure, this information is shown in brackets. For the exact requirements, reference should be made to the statutes themselves.

- Reasonable notice of hearing must be given (the rules of procedure state not less than 10 days).
- The notice of hearing must contain the time, place, and purpose of the hearing (the rules of procedure also contain this requirement).
- The notice of hearing must also contain a reference to the statutory authority under which the hearing is to be held which, in this case, is section 44(1), (2) or (3) of the Planning Act.
- The notice of hearing must contain a statement that, if a party who is notified does not attend the hearing, the committee can proceed and the party is not entitled to any further notice.
- The hearing must be public (section 44(6) states that the hearing must be public).

- The decision must be in writing and should include reasons if the applicant requests it (section 44(8) states that the decision must be in writing and include reasons).

- The decision must be mailed to all parties who took part in the hearing (section 44(1) indicates to whom the notice must be mailed. This includes parties at the hearing who requested notice of the decision).

The Decision

Written decisions only — To fulfill the technical requirements (section 44(8)), the decision must:

- be made by a majority of the members hearing the application;

- be in writing;

- set out the reasons for the decision; and

- be signed by members who concur with the decision.

A sample decision is shown in Appendix IV. The committee does not have to make the decision at the hearing. In many cases it is perhaps better to make the decision after giving some thought to the information presented at the hearing.

Reasons required — A committee must give careful attention to the written reasons required in its decision. The provision of sound, well-considered reasons will often satisfy an applicant or someone else who without knowing such reasons, may be inclined to appeal the decision.

Many decisions simply state that the application is approved because it maintains the intent of the zoning by-law (and the official plan) and is desirable for the appropriate development of the land. A more comprehensive decision would attempt to state *how* and *why* the intent is maintained.

For example, a proposed addition may encroach into the rear yard requirement of the by-law. The committee feels that because of the large size of the abutting lots, the proposal will not alter the character of the neighbourhood. The decision should include this information.

Conditions of approval — the committee may set conditions and time limits in its decision to approve an application (section 44(9) of the Planning Act). If the committee does not set a time limit, its approval does not lapse.

Perhaps the committee has an application for an office building that will not have enough side yard to meet the by-law requirements. The committee feels that the encroachment is minor but would like to ensure privacy for the adjacent uses. In this case, they could decide to approve the application subject to a 1.82 metre high wooden privacy fence being erected along that side of the property.

Enforcement of conditions — There may be some concern about the enforcement of conditions. However, if the applicant fails to meet any of the conditions imposed by the committee, he no longer has valid permission. Since the validity of the committee's decision is dependent on the fulfillment of *all* conditions, enforcement is not a serious concern.

There are several ways to help in the enforcement of conditions. One and perhaps the most important is to put a time limit on their fulfillment. In the previous example, the committee could specify that the fence must be built within six months or within some other stated period prior to the issuance of the building permit. The committee can also stipulate that a condition be fulfilled to the satisfaction of a municipal department or official since this ensures that the applicant conforms to the requirements of the municipality. An additional method is the use of agreements. Such agreements must be made between the property owner and the municipality since the municipality, unlike the committee of adjustment, is a corporate body which can enter into such agreements.

Notice of decision — Within 10 days of the date of the decision the secretary-treasurer must send by mail a certified copy of the decision indicating the last day for appealing to the Ontario Municipal Board to:

- the applicant;
- the minister, if he requests it by registered mail; and
- any person who appeared in person or by counsel at the hearing and filed with the secretary-treasurer a written request for such notice.

Where no appeal lodged — The decision of the committee becomes final and binding if, after 30 days, no appeal of the decision to the Ontario Municipal Board has been received by the secretary-treasurer (section 44(14)). In such instances, the secretary-treasurer must then notify the applicant and file a certified copy of the decision with the clerk of the municipality.

Appeals to the Ontario Municipal Board

Who can appeal — Once the notice of decision has been sent out, the decision of the committee may be appealed to the Ontario Municipal Board. The appeal may be made by the applicant, the Minister of Municipal Affairs and Housing, the municipality or any other person who has an interest in the matter (section 44(12)).

Notice of appeal/fee — The notice of appeal must state the objection and the reasons for it. It must be personally served or sent by registered mail to the secretary-treasurer of the committee. The fee, prescribed by the Ontario Municipal Board, must be enclosed. The current appeal fee is $100 for each separate appeal.

30 Day appeal period — The appeal must be lodged within 30 days after the notice of decision has been sent. Note that section 44(10) states that the notice of decision must contain the last date of appeal to the Ontario Municipal Board. The secretary-treasurer should wait 2 or 3 days beyond the appeal period for receipt of any appeals made within the prescribed 30 days but delayed by slow delivery of registered mail.

Committee's jurisdiction after appeal — Once the appeal is lodged with the secretary-treasurer, the committee has no further jurisdiction. The secretary-treasurer must forward by registered mail to the OMB all documents filed with the committee on the appealed matter together with other information required by the OMB. The material to be forwarded to the OMB is indicated in the board's form (Appendix V).

The Ontario Municipal Board Hearing

Hearing — Where an appeal is made to the board, it is required to hold a hearing, except where the persons who appealed withdraw the notice of appeal or where the board is of the opinion that the objection to the decision as set out in the notice of appeal is insufficient. In the latter case, the board may dismiss the appeal without holding a full hearing. However, before it dismisses the appeal it must notify the appellant and afford him an opportunity to make representations on the merits of the appeal.

In the former case, after being contacted by the board, the decision of the committee is final and binding and the secretary-treasurer files a certified copy of the decision with the clerk and notifies the applicant.

Notice of hearing — The Ontario Municipal Board notifies the applicant, the appellant and the secretary-treasurer of the date for a hearing. Additional notification is at the board's discretion (section 44(16) of the Planning Act).

Nature of the hearing — The hearing is de novo. The Ontario Municipal Board is not judging the adequacy of the comittee's decision but rather is holding an entirely new hearing. For that reason the committee does not have to defend its decision nor is it required to be an active participant.

Council's involvement — In some cases, the municipal council, as the appellant, may send a representative before the board to give evidence. In other appeals, council may send a representative to the hearing to support or oppose the application.

The Ontario Municipal Board Decision

Decision — When it conducts an appeal hearing, the board issues two documents. One is the *Decision;* the other is the *Board Order.* There are two types of decisions. One is a written decision prepared when the board reserves its decision at the hearing. The second is a memorandum of an oral decision putting in writing the oral decision given at the hearing. A written decision is usually sent to those who appeared at the hearing and anyone else who requests it. A memorandum of oral decision is only sent out on request.

The decision will contain any conditions that must be fulfilled prior to the Board Order being issued. If an appeal does not come to a hearing, i.e. is withdrawn, no decision is issued.

The Board Order is issued for all appeals lodged with the board which are not withdrawn by the appellant. It represents the final disposition of the appeal by the OMB. If conditions are attached to a decision of the board, they must be fulfilled before the order is issued. If an appeal is withdrawn by the appellant the board does not issue an order. Instead the secretary of the board notifies the secretary-treeasurer of the committee of the withdrawal of the appeal.

Committee's involvement — The board sends a copy of its order to the secretary-treasurer of the committee and the appellant. The secretary-treasurer in turn must file a copy of the order with the municipal clerk (section 44(20)). The copy of the order received by the secretary-treasurer from the board should be filed on the appropriate committee file and the file closed.

Applicant's involvement — The board is also required to send a copy of the order to the applicant. Where the application has been granted by the board, it is in the interest of the applicant to retain a copy of the order for his/her records.

6 THE PLANNING FRAMEWORK

The Value of Policy Information

A committee of adjustment has a highly specialized function. To do its job effectively, a committee should have as much information as possible at its disposal. Part of the background information that committee members should be aware of is the planning policies which affect a municipality.

Policy statements — Under section 3 of the Planning Act, 1983 the Minister of Municipal Affairs and Housing, either alone or with other ministers, may issue policy statements approved by Cabinet on municipal planning matters of provincial interest. Each municipality will receive notice of the issuance of such statements. In turn, each municipality must give notice to any local board it considers has an interest in the statement. This should include the committee of adjustment. The Act requires that all agencies, including the committee of adjustment, have regard to policy statements in exercising any authority that affects planning matters. The committee is obliged to review all applications in relation to these statements whether or not the official plan in effect has been amended to take the statements into account.

The official plan — The main planning policy document for a municipality is its official plan. It is the plan for the physical development for the area that it covers. If the municipality does not have an official plan, it may have some type of land development policies. The committee should check with the municipal clerk's office to obtain copies of all policy documents. Committee members should acquaint themselves with the land use policies in effect for the municipality.

Framework for decisions — While a committee of adjustment that considers only minor variance and non-conforming use applications does not have to make detailed policy decisions, an understanding of the policy framework is still essential. Applicable policies provide a basis for consistent decisions. If the policy states that a neighbourhood is to be low density single family residential neighbourhood, then the committee has to abide by that policy.

Evaluating Minor Variance Applications

Committees of adjustment considering minor variance applications have no absolute tests to guide their assessment. Section 44(1) of the Planning Act states that the authorized variance from the zoning by-law should:

- be minor;
- be desirable for the appropriate development or use of the land, building or structure;
- maintain the general intent and purpose of the zoning by-law; and
- maintain the general intent and purpose of the official plan, if any.

What is Minor?

Minor is a relative term and must be interpreted in the particular circumstances involved together with the other three factors just mentioned. These three factors could be dealt with in reverse order in certain instances.

There is no definition as to what constitutes a minor variance and what does not. In each specific situation, the actual on-ground circumstance determines whether or not the variance is minor.

A minor variance cannot be mathematically calculated. The same variance may be minor in one situation and major in another. For example, a property owner may wish to construct an addition to his single family dwelling for a main floor laundry room. The addition will encroach 1 metre into the rear yard setback requirement of 7.5 metres.

On the other hand, imagine a situation where an addition will encroach the same 1 metre but is for a home occupation use such as a beauty salon. In this case there could be concern about frequency of traffic, parking and the setting of a precedent for similar additions. In these two cases, the requested variances are identical mathematically. They may both maintain the intent and purpose of the zoning bylaw and the official plan. However, the second one would have considerably greater impact on the surrounding uses and could be regarded as not being desirable for the appropriate development or use of the land. It is the committee's responsibility to decide if this is a minor variance.

Desirable Development/Use

The issue of desirability is complex. One aspect is the effect of the minor variance on adjacent neighbours. For example, if the application is to reduce the required number of parking spaces for a specific proposal, it could result in more on-street parking and a problem for the adjacent property owners. The committee should assess this aspect of the proposal before making its decision. This question of desirability can be more general. Is it desirable to allow this minor variance from the point of view of its impact on the municipality as a whole? Minor variances should not set precedents. The approval should provide relief from provisions of the by-law because of a hardship situation created by the problems indicated in a given application.

For example, suppose the committee approves an application for two semi-detached dwelling units on a lot with a 21.5 metre frontage. The approved by-law standard is 24.5 metres. If this were a situation where one 21.5 metre lot happened to exist in the middle of a built-up neighbourhood, then the committee might be justified in granting this variance.

On the other hand, suppose this 21.5 metre lot is located in an area of many 21.5 metre lots that could be similarly developed. In such circumstances, if the committee were to grant several minor variances for semi-detached dwellings on 21.5 metre lots, it would be tampering with the intent of the by-law. Council has established an approved standard of 24.5 metres. The committee of adjustment is altering council's approved policy by permitting several variances from that standard.

If the by-law was poorly drafted and does not recognize the municipality's large number of 21.5 metre wide lots that could be successfully developed with semi-detached residences, then the zoning by-law may have to be amended to make it more realistic. The final decision on whether or not the by-law should be changed must be made by council. If the committee, in the course of carrying out its duties, identifies such a problem, it should direct council's attention to it. The committee should not, however, attempt to correct zoning by-law oversights through its decisions.

Maintaining the Intent/Purpose of the Zoning By-law

Committee decisions should maintain the intent of the zoning by-law. Standards in zoning by-laws are not arbitrary. They are established for specific reasons. Committees of adjustment alter these standards for individual lots through their decisions. It is, therefore, important for committee members to understand why these standards were enacted in the first place.

For example, suppose the committee is assessing a proposal to reduce the side yard requirement of a residential lot. The committee must, first of all, determine what the intent of the by-law is in establishing the side yard requirement.

One possible reason is visual amenity. Spacing between houses is more attractive than houses crowded together. It also provides separation for privacy, freedom from sun shadows, fire protection and access to the rear yard. The committee must decide whether the variance applied for will compromise the basis for a side yard requirement. If the committee feels that the reduction would not be within the intent of the by-law, the application should be refused.

Maintaining the Intent/Purpose of the Official Plan

Committee decisions should maintain the policy directions established in the official plan. This is especially important where the variance is to a by-law that does not implement the current official plan.

Perhaps the municipality has had a zoning by-law for a number of years. More recently a new official plan has been prepared and approved. That official plan has not been implemented by a new zoning by-law. As a result, building permits are issued in accordance with the standards and permitted uses in the old by-law.

Suppose, as shown in Figure 6, an individual wishes to build a shopping centre on B street but cannot meet the minimum setback requirement in the zoning by-law of 7.5 metres. He applies to the committee of adjustment for a variance to permit a reduction of the setback requirement for this specific proposal to 7.0 metres. The committee, in reviewing this application, notes that it is an official plan policy to eventually widen B street by 1 metre and so even more of the setback would be eliminated. The eventual setback would be 6 metres. In this case to grant minor variance would not be in keeping with the intent of the official plan.

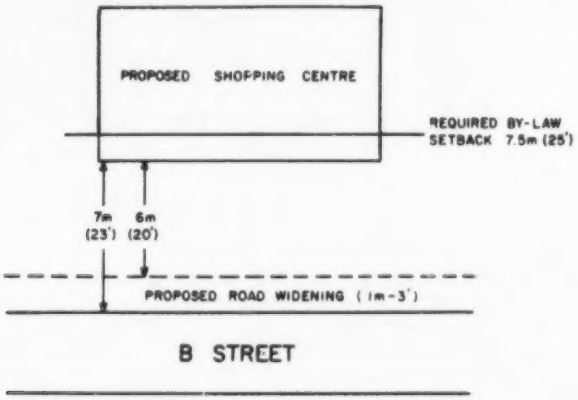


FIGURE 6

Minor Variance then Consent . . . or Vice Versa?

Should the minor variance approval precede the consent, or should the consent approval come first? There is no hard and fast rule. Committees should, however, be aware that consent approval can be made conditional on the minor variance being obtained.

For example, the owner of the lands shown in Figure 7 has a large lot and wants to create two lots and sell one for a single family residence.

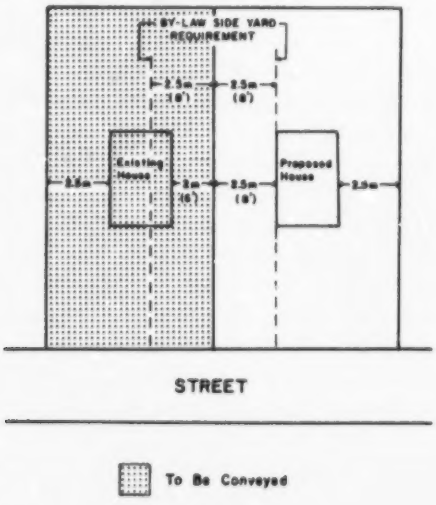


FIGURE 7

The official plan designates the area for residential development. The zoning by-law zones it for single-family residential use. There is one problem. One lot will not meet the required side yard requirement of 2.5 metres. How should this situation be handled?

If both the consent and variance are handled by the same committee, then both applications can be considered together, simplifying the situation. On the other hand, if the proposal is located in a municipality where consent is handled by another authority, the consent approval could then be made conditional upon the committee of adjustment approving the minor variance. The committee of adjustment can then consider the minor variance application.

In this situation, it is important for the committee not to grant the minor variance simply because the consent has been granted.

The application should be evaluated objectively. If there is a feeling that the minor variance is not in keeping with the intent of the by-law, then the minor variance should not be approved. Since the condition for the consent has not been fulfilled, the consent decision could not be finalized and the proposed lot referred to in the example cannot be created.

Minor Variances from Proposed By-laws

Council must have passed a zoning by-law before it can establish a committee of adjustment. While the committee can be established before the by-law comes into force we suggest the committee not grant any approvals until after the by-law is in force because, if the by-law is appealed to the Ontario Municipal Board, the subsequently approved by-law may vary substantially from that adopted by council.

The Minor Variance as a Special Privilege

A minor variance is a special privilege. It can reduce the inflexibility of the zoning by-law so that undue hardship does not result. There should, however, be a valid reason why the by-law requirements cannot be met.

If a property owner cannot provide the additional off-street parking required by the by-law, his land should not necessarily be prevented from developing. That is, provided of course, that no problems will result from reducing that requirement. On the other hand, if the proposal can be changed in some way, perhaps by making the building smaller, then the minor variance should not be granted.

Suppose a property owner requests a minor variance because it would be cheaper for him to build if he obtained a minor variance. He is required, for example, to provide a 6 metre wide buffer between his use and the adjacent use. He wishes to reduce this buffer to 3 metres so that he can maximize the buildable area of the lot. This is not a legitimate request for a minor variance. In this situation, the applicant can meet the terms of the by-law.

It is also not the function of the committee to legalize by-law contraventions. A property owner, either deliberately or without knowing it, may put in a foundation too close to the rear lot line. He may then apply to the committee for a minor variance. The committee should not grant the variance simply because the building is already there. The application should be evaluated as if the building was a new use and if it cannot be justified, it should not be approved.

Evaluating Applications Involving Legal Non-Conforming Uses

The basic principle behind assessing these applications is to prevent hardship to legal non-conforming uses established before the existing by-law was passed. Even though a particular use does not meet the long term planning objectives of the municipality, it should not be penalized unduly.

Determining if the Use is Legal Non-Conforming

The committee must first determine whether or not the application is for a legal non-conforming use. The application form prescribed by the rules of procedure has specific questions to aid the committee in establishing the nature of the use. Question 13 asks for the construction dates of the existing buildings. Question 16 asks how long the present uses have been on the site. The use is legal non-conforming only if:

- the building was constructed in accordance with all the regulations in effect when it was built;

- the present use is the same as that prohibited by the zoning by-law the day the by-law was passed or the present use was previously permitted by the committee of adjustment; and

- the present use has been continuous from the date of its legal commencement to the date of application to the committee.

Maintaining the Intent of the Zoning By-law

Once the legitimacy of the application is established, committee members must evaluate certain aspects of the proposal. In doing so, the committee members must remember that eventually the use should cease to exist. That is why no new separate buildings can be constructed. It is at this point that committee members may wish to look at the official plan to understand the municipality's long term goals for the area.

In reviewing an application involving a non-conforming use, the committee should keep the municipal zoning by-law in mind. In most cases, that by-law will contain standards for that type of use. For example, suppose the non-conforming use is a commercial building. The zoning by-law does not permit commercial uses in this location. It does, however, contain standards for commercial development.

Even though the use is non-conforming, it should, if possible, still be subject to the by-law standards for commercial uses. If the by-law has requirements about accesses or buffering of commercial uses, the committee should try to apply them to the site. This can be done through the use of conditions.

Determining if the Use is Similar or More Compatible

When the committee is evaluating an application for a similar or more compatible use, it must ensure that the proposed use is similar in purpose to the existing use or more compatible with the uses permitted in the by-law. Committee members should consider, for example:

- traffic volumes
- parking requirements
- hours of operation
- noise

of the proposed use and how it compares to the existing use. The committee should also look at the official plan to determine what the eventual desired character of the neighbourhood will be.

The Use of Conditions

The committee does not have to approve the application as submitted. Section 44(9) allows a committee to attach conditions to the approval. If the committee can improve an application through the use of conditions it should do so.

7 ADDITIONAL INFORMATION

The Ontario Association of Committees of Adjustment and Consent Authorities (OACA)

This is an organization established by committees of adjustment and consent granting authorities to facilitate mutual contact and benefit among their members. The Association regularly publishes a newsletter, containing information of interest to committee members. It also sponsors a seminar once a year primarily to assist secretary-treasurers, and an annual conference for all members. Membership inquiries should be addressed to the secretary-treasurer of the Association in office at the time of this guideline's publication:

Ontario Association of Committees of Adjustment and Consent Authorities (OACA)
℅ Mrs. T. Arneill, Secretary-Treasurer
Committee of Adjustment
Guelph City Hall
59 Carden Street
Guelph, Ontario
M1H 3A1

Municipal Conflict of Interest Act, 1983

A member of a committee of adjustment may have direct or indirect financial interest in a matter before the committee. In such cases, the affected member must adhere to the requirements of the Municipal Conflict of Interest Act, 1983 by doing the following before consideration of the matter at the meeting:

- stating interest *and* disclosing the general nature of the interest;
- abstaining from discussion or the vote on the matter; and
- not attempting before, during or after the meeting to influence the vote or decision on the matter.

Compliance — The onus for compliance with this Act rests with the members only. It is not the responsibility of council, the committee of adjustment, secretary-treasurer of the committee, the municipal solicitor or any member of the municipal staff. Members should therefore be familiar with the detailed requirements of the Act.

Quorum — The Municipal Conflict of Interest Act requires a quorum of no less than two members in instances where several members have a conflict of interest. It supersedes the requirements for a quorum for a committee of adjustment under section 43(5) of the Planning Act, 1983 if members have a conflict of interest. Where only one member is not affected by a conflict of interest, the committee may apply to a judge for an order authorizing the committee to vote on the matter out of which the conflict of interest arises. The judge may make a declaration that the requirements for disclosing interest and withdrawing from the proceedings do not apply. The committee may then consider, discuss and vote on the matter subject only on such conditions and directions as the judge may consider appropriate and order. If the judge cannot make a declaration it is possible that the requirements of the Municipal Conflict of Interest Act may have been contravened.

APPENDICES

APPENDIX 1

SAMPLE BY-LAW TO CONSTITUTE AND APPOINT A COMMITTEE OF ADJUSTMENT

(Name of Municipal Corporation)

By-law No. _____

Being a by-law to constitute and appoint a Committee of Adjustment for the Municipality (village, township, town, city) of.....

Whereas it is deemed expedient to constitute and appoint a Committee of Adjustment, as provided for in the Planning Act, 1983, section 43.

Now, therefore, the Council of the Corporation of

.....

enacts as follows:

(1) The Committee of Adjustment for the (name of municipal corporation) is hereby constituted and the following persons are hereby appointed as its members for the term ending on the date shown for respective members, or until their successors are appointed.

(1) _____ to hold office until ....., 19.....

(2) _____ to hold office until ....., 19.....

(3) _____ to hold office until ....., 19.....

Read a first and second time this ..... day of ....., 19.....

..... Clerk ..... Reeve (or Mayor).

Read a third time and finally passed on this ..... day of ....., 19.....

..... Clerk ..... Reeve (or Mayor).

APPENDIX II

SAMPLE APPLICATION INDEX

RECORD OF MINOR VARIANCE APPLICATIONS

APPLICANT's NAME	"A" NO.	DATE OF DECISION	GRANTED	REFUSED	APPEALED	COMMENTS

APPENDIX III

SAMPLE SUMMARY SHEET

SAMPLE SUMMARY SHEET — MINOR VARIANCES

1. a. Committee file no. .....
   b. Committee application no. .....
   c. Hearing date .....
   d. Date of receipt of *completed* application .....
   e. Checked by .....
   f. Zoning by-law no. ..... Sections .....
   Zone .....
   g. Official Plan designation .....
   h. Relevant Provincial Policy Statement .....
   i. Site Visit carried out:
   Yes ( ) No ( )
   j. Consent needed:
   Yes ( ) No ( )
   k. Authorization of owner received (if required) ( )

2. Date notice of hearing sent to those parties under the Rules of Procedure .....

3. Date notice of decision sent under subsection 44(10) of the Planning Act .....

4. Type of relief applied for

Side yard	( )	Change of building size	( )
Rear yard	( )	Change of building details	( )
Non-conforming	( )	Home Occupations	( )
Lot width	( )	Change of accessory use	( )
Lot area	( )	*Other (specify)	
Lot depth	( )		
Lot coverage	( )		
Floor area ratio	( )		
Parking	( )		
Height	( )		
Set back	( )		
Zone extension	( )		

*Relief to other aspects of a section 34 (zoning) or 37 (interim control) by-law, or any specified by-law that implements an official plan which council authorizes the committee to vary.

APPENDIX IV

SAMPLE DECISION

(Name of Municipal Corporation)

.....

Committee of Adjustment Decision

Application No. .....
Date of Hearing .....
Date of Decision .....
In the matter of section 44 of the Planning Act, Zoning By-law No. ..... and an application for ( ) minor variance; ( ) permission to allow .....
.....
.....
.....
Location of the property: Lot ..... Con. .....
Street Address .....

The request is hereby ( ) refused or ( ) granted subject to the following conditions:

1. .....
2. .....
3. .....
4. .....

Reasons: .....
.....
.....

Concur in the Decision:

..... Committee Member
..... Committee Member
..... Committee Member
..... Committee Member

NOTICE OF LAST DATE OF APPEAL

Notice is hereby given that the last date for appealing this decision to the Ontario Municipal Board is ..... 198.....

APPENDIX V

Ontario Municipal Board

Minor Variance Appeals

Material to be forwarded to the Ontario Municipal Board by the Secretary-Treasurer of the Committee of Adjustment with a notice of appeal under subsection 44(13) of the Planning Act, 1983.

Municipality: _____ Committee Submission No.: A- _____

Variance from Zoning By-law No.: _____

Please check the appropriate box and attach all necessary material to this form:

Attached	Does Not Apply		
☐		1.	Notice of appeal, including reasons in support of the objection to the decision.
☐		2.	Board fee for each separate appeal payable to the Treasurer of Ontario.
☐		3.	Copy of application for minor variance.
☐	☐	4.	Authorization if application made by other than the owner.
☐	☐	5.	All plans and sketches before the Committee.
		6.	Names and addresses of the following:
☐	☐		(a) All legal counsel, persons, officials and agencies who appeared before the Committee.
☐	☐		(b) All legal counsel, persons, officials and agencies who made written submissions to the Committee.
☐		7.	Decision of Committee with written reasons.
☐		8.	Minutes of Committee hearing.
☐	☐	9.	Copy of written submissions to the Committee by persons, officials and agencies.
☐		10.	Last date for filing notice of appeal to Secretary-Treasurer.
☐		11.	Date notice of appeal delivered by hand or mailed to Secretary-Treasurer.
☐		12.	Sworn declaration by the Secretary-Treasurer of compliance with subsection 44(10) of the Planning Act.

Attached	Does Not Exist		
		13.	Copy of relevant extracts from:
☐	☐		(a) Official Plan
☐			(b) Zoning By-law

Yes	No		
☐	☐	14	(a) Is this variance appeal connected with a consent application?
☐	☐		(b) Has a decision on the consent application been appealed to the Board? If so, please provide the following:

Name of Approval Authority: _____

Submission No.: B- _____ O.M.B. File No.: C- _____

Name of Secretary-Treasurer: _____ Phone No.: _____

Address: _____

Signature of Secretary-Treasurer _____ Date: _____

Mail completed form and material to:

Ontario Municipal Board
180 Dundas Street West
Toronto, Ontario
M5G 1E5

OM 929 (11/83)

For further information, contact any of the following offices of the Ministry of Municipal Affairs and Housing:

Community Planning Advisory Branch

Central Region
47 Sheppard Avenue East
2nd Floor
Willowdale, Ontario
M2N 2Z8
Telephone: (416) 224-7635
ZENITH 52650

South East Region
244 Rideau Street
3rd Floor
Ottawa, Ontario
K1N 5Y3
Telephone: (613) 566-3801
ZENITH 52650

North East Region
1191 Lansing Avenue
Sudbury, Ontario
P3A 4C4
Telephone: (705) 560-0120
TOLL FREE 1-800-461-1193

South West Region
495 Richmond Street
7th Floor
London, Ontario
N7A 5A9
Telephone: (519) 673-1611
TOLL FREE 1-800-265-4736

North West Region
435 James Street South
Thunder Bay, Ontario
P7C 5G6
Telephone: (807) 475-1651
ZENITH 52650

Plans Administration Branch — North and East

777 Bay Street
14th Floor
Toronto, Ontario
M5G 2E5
Telphone: (416) 585-6014

Plans Administration Branch — Central and Southwest

777 Bay Street
14th Floor
Toronto, Ontario
M5G 2E5
Telephone: (416) 585-6014

Local Planning Policy Branch

777 Bay Street
13th Floor
Toronto, Ontario
M5G 2E5
Telephone: (416) 585-6225

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Ontario
Ministry of
Municipal Affairs
and Housing
Claude Bennett, Minister

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13th Floor
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